



OFFICE *of the* ATTORNEY GENERAL  
GREG ABBOTT

April 10, 2003

Ms. Cynthia J. Hill  
Attorney  
Texas Department of Information Resources  
P.O. Box 13564  
Austin, Texas 78711-3564

OR2003-2408

Dear Ms. Hill:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 179143.

The Texas Department of Information Resources (the "department") received two requests from the same requestor for information related to the department's Request for Offers for digital subscriber line internet access service, RFO No. Tele 10-14-02. In the first request, the requestor asks for 1) the evaluation criteria and related documents for the RFO; 2) the offer submitted by SBC Communications, Inc. ("SBC"); 3) the offer evaluation documentation, including notes, for the offer submitted by SBC; 4) the offer submitted by AT&T Government Solutions ("AT&T"); and 5) the offer evaluation documentation, including notes, for the offer submitted by AT&T. The second request reiterates the request for copies of the proposals submitted by SBC and AT&T. You state that some responsive information has been made available to the requestor. You further state that requested information pertaining to the evaluation process does not exist. The Public Information Act does not require a governmental body to disclose information that did not exist at the time the request was received. *Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex.Civ.App.-San Antonio 1978, writ diss'd); Open Records Decision No. 452 at 3 (1986). The department takes no position as to whether the proposals submitted by SBC and AT&T may be withheld pursuant to an exception to the Public Information Act (the "Act"). Rather, you state, and provide documentation showing, that you notified SBC and AT&T of the request and of their right to submit arguments to this office as to why the information should not be released. See Gov't Code § 552.305(d); see also Open Records Decision

No. 542 (1990) (determining that statutory predecessor to § 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under Act in certain circumstances). We have reviewed the submitted information.

An interested third party is allowed ten business days after the date of its receipt of the governmental body's notice under section 552.305(d) to submit its reasons, if any, as to why requested information relating to that party should be withheld from disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, SBC and AT&T have not submitted any comments to this office explaining why any portion of their respective proposals should not be released to the requestor. Therefore, we have no basis to conclude that the release of any portion of the SBC proposal or the AT&T proposal would implicate the proprietary interests of the companies. *See* Open Records Decision Nos. 639 at 4 (1996) (to prevent disclosure of commercial or financial information, party must show by specific factual or evidentiary material, not conclusory or generalized allegations, that it actually faces competition and that substantial competitive injury would likely result from disclosure), 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3 (1990).

We note that the submitted information contains e-mail addresses of members of the public. Section 552.137 of the Government Code provides:

- (a) An e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under this chapter.
- (b) Confidential information described by this section that relates to a member of the public may be disclosed if the member of the public affirmatively consents to its release.

Unless the relevant individuals have affirmatively consented to the release of their e-mail addresses, the department must withhold the e-mail addresses that we have marked under section 552.137 of the Government Code.

We also note that a portion of the submitted information is protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are protected by copyright. Attorney General Opinion JM-672 (1987). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.* If a member of the public wishes to make copies of materials protected by copyright, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit. *See* Open Records Decision No. 550 (1990).

In summary, the department must withhold the marked e-mail addresses pursuant to section 552.137 of the Government Code. The remainder of the submitted information must be released in compliance with copyright law.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



David R. Saldivar  
Assistant Attorney General  
Open Records Division

DRS/seg

Ref: ID# 179143

Enc: Submitted documents

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